



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**MEMORANDUM**

AUG 13 2002

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

Rosemary C. Smith, *RC*  
Acting Associate General Counsel

Mai T. Dinh, *MTD*  
Acting Assistant General Counsel

Michael G. Marinelli, *mm*  
Attorney

Dawn M. Odrowski  
Attorney

Anne Weissenborn, *AW*  
Senior Attorney

**AGENDA ITEM**

For Meeting of: 8-15-02

**SUBMITTED LATE**

**SUBJECT:** Draft Notice of Proposed Rulemaking on Contribution Limitations and Prohibitions

Attached is a draft Notice of Proposed Rulemaking ("NPRM") addressing issues relating to contribution limitations and prohibitions raised in the Bipartisan Campaign Reform Act of 2002 ("BCRA"). The issues included in this NPRM include the increase in contribution limits, the prohibition on contributions and donations by minors, and the prohibition on contributions, donations, and certain expenditures and disbursements by foreign nationals. Under § 402 of BCRA, these rules must be promulgated no later than December 22, 2002.

The Commission is scheduled to discuss this draft on Thursday, August 15, 2002. If you have questions or comments before that time, please feel free to contact us.

**Recommendation**

The Office of General Counsel recommends that the Commission approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 110**

3 **[Notice 2002 - >]**

4 **Contribution Limitations and Prohibitions**

5 **AGENCY:** Federal Election Commission

6 **ACTION:** Notice of Proposed Rulemaking

7 **SUMMARY:** The Federal Election Commission seeks comments on proposed  
8 changes to its rules relating to contribution limitations and  
9 prohibitions under the Federal Election Campaign Act of 1971, as  
10 amended (“FECA” or “the Act”). The proposed rules are based on  
11 the Bipartisan Campaign Reform Act of 2002 (“BCRA”), which  
12 increases contribution limits for individuals and political  
13 committees; prohibits contributions and donations by minors to  
14 certain political committees; and prohibits contributions,  
15 donations, and certain expenditures and disbursements by foreign  
16 nationals. Please note that the draft rules that follow do not  
17 represent a final decision by the Commission on the issues  
18 presented by this rulemaking. Further information is provided in  
19 the supplementary information that follows.

20 **DATES:** Comments must be received on or before September 20, 2002.

21 **ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Acting  
22 Assistant General Counsel, and must be submitted in either  
23 electronic or written form. Electronic mail comments should be

1 sent to BCRA Part110@fec.gov and must include the full name,  
2 electronic mail address, and postal service address of the  
3 commenter. Electronic mail comments that do not contain the full  
4 name, electronic mail address, and postal service address of the  
5 commenter will not be considered. Faxed comments should be  
6 sent to (202) 219-3923, with printed copy follow-up to ensure  
7 legibility. Written comments and printed copies of faxed  
8 comments should be sent to the Federal Election Commission, 999  
9 E Street N.W., Washington, D.C. 20463. Commenters are strongly  
10 encouraged to submit comments electronically to ensure timely  
11 receipt and consideration. The Commission will make every effort  
12 to post public comments on its website within ten business days of  
13 the close of the comment period.

14 **FOR FURTHER**  
15 **INFORMATION**  
16 **CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, or Attorneys  
Mr. Michael Marinelli (contribution limitations), Ms. Dawn  
Odrowski (minor contributions), or Ms. Anne A. Weissenborn  
(foreign nationals), 999 E Street, N.W., Washington D.C. 20463,  
(202) 694-1650 or (800) 424-9530.

21 **SUPPLEMENTARY**  
22 **INFORMATION:**

The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155,  
116 Stat. 81 (March 27, 2002), contains extensive detailed amendments to the Federal  
Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. This Notice of  
Proposed Rulemaking (“NPRM”) is part of a continuing series of rulemakings the

1 Commission is publishing over the next several months in order to meet the rulemaking  
2 deadlines set out in BCRA.

3 This NPRM addresses the increase in contribution limits, the prohibition on  
4 contributions and donations by minors to certain political committees, and the prohibition  
5 on contributions, donations, and certain expenditures by foreign nationals. These  
6 changes to the Act addressed in this NPRM are only a few of many changes made to the  
7 Act by BCRA. Other rulemakings have addressed or will address: 1) non-Federal funds  
8 or “soft money” (promulgated on June 22, 2002, 67 Fed. Register 49063 (July 29, 2002));  
9 2) coordinated and independent expenditures;<sup>1</sup> 3) the so-called “millionaires’  
10 amendment,” which increases contribution limits for congressional candidates facing  
11 self-financed candidates on a sliding scale, based on the amount of personal funds the  
12 opponent contributes to his or her campaign; 4) electioneering communications (for  
13 NPRM, see 67 Fed. Register 51131 (Aug. 7, 2002)); 5) other new and amended  
14 provisions, including inaugural committees, fraudulent solicitations, disclaimers, personal  
15 use of campaign funds, and civil penalties; 6) reporting; and 7) reorganization of  
16 “contribution” and “expenditure” definitions (for final rules, see 67 Fed. Register 50582,  
17 August 5, 2002). The reporting NPRM will contain the reporting rules proposed in  
18 several of the other NPRMs and will restructure 11 CFR part 104 to make the reporting  
19 rules more user-friendly. Section 402(c) of BCRA establishes a 270-day deadline for the  
20 Commission to promulgate these rules. Since BCRA was signed into law on March 27,  
21 2002, the 270-day deadline is December 22, 2002.

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<sup>1</sup> This NPRM will also address certain communications that are coordinated with candidate or political party committees that would otherwise constitute electioneering communications.

1    **Introduction**

2           The Act limits the amounts that individuals and entities are permitted to  
3   contribute, and who may contribute those amounts, to candidates, political committees,  
4   and political party committees for use in Federal elections. 2 U.S.C. 441a and 441e.  
5   BCRA amends the FECA by increasing some of the contribution limits in 2 U.S.C. 441a,  
6   and by prohibiting certain contributions by minors in new 2 U.S.C. 441k. BCRA also  
7   amends 2 U.S.C. 441e, which prohibits contributions, donations, and expenditures made  
8   by foreign nationals. The proposed rules would implement these amendments.

9

10   **Increases in Contribution Limits**

11    1. Increases in the Contribution Limits for Individuals (11 CFR 110.1 and 110.5)

12           The Act limits the amount that individuals may contribute to candidates, political  
13   committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The  
14   pre-BCRA provisions of the Act permitted persons to contribute up to \$1,000 to Federal  
15   candidates per election and up to \$20,000 per year to political committees established and  
16   maintained by national political parties.<sup>2</sup> BCRA amends 2 U.S.C. 441a(a)(1)(A) to  
17   increase the amount persons can contribute to Federal candidates to \$2,000 per election  
18   and amends 2 U.S.C. 441a(a)(1)(B) to increase the amount that may be contributed by

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<sup>2</sup> The Act also permits a person to contribute up to \$5,000 per year to any other political committees.  
2 U.S.C. 441a (a)(1)(C). This limit was left unchanged by BCRA. However BCRA did revise  
2 U.S.C. 441a(a)(1) by adding paragraph (D), which permits persons to make up to \$10,000 in  
contributions to a political committee established and maintained by a State committee of a political party  
in a calendar year. This provision is addressed in a separate rulemaking. See Prohibited and Excessive  
Contributions: Non-Federal Funds or Soft Money Final Rules, 67 Fed. Register 49063 (July 29, 2002).

1 individuals to committees maintained and controlled by national political parties to  
2 \$25,000 per year.

3 Current 11 CFR 110.1(b)(1) and (c)(1), which contain the contribution limits in  
4 2 U.S.C. 441a(a)(1)(A) and (B), would be amended to incorporate the new increased  
5 contribution limits. Proposed paragraph (b)(1) would establish the new base contribution  
6 limit of \$2,000 that a person may contribute to a candidate for election to any Federal  
7 office. Under proposed paragraph (b)(1)(i), that limit of \$2,000 would be increased if  
8 necessary each election cycle by the difference in the price index in accordance with  
9 proposed 11 CFR 110.17, which is discussed below. Once the limit is increased,  
10 proposed paragraph (b)(1)(ii) would establish the effective dates of the increase from the  
11 day after the last general election to the day of the next general election. Because the  
12 contribution limits could change every two years, depending upon the consumer price  
13 index, proposed paragraph (b)(1)(iii) states that the Commission would publish the new  
14 contribution limits in effect in the Federal Register every odd-numbered year and  
15 maintain that information on its website. Proposed section 110.1(c)(1) would parallel  
16 proposed section 110.1(b)(1), except it would establish the base contribution limit that a  
17 person would be able to make to a political committee of a national political party at  
18 \$25,000 per calendar year. Proposed paragraphs (c)(1)(i), (ii), and (iii) would mirror  
19 proposed paragraph (b)(1)(i), (ii), and (iii), applying the same indexing as necessary each  
20 election cycle with the same effective dates.

21 The limit for the calendar year when the change becomes effective would be  
22 affected as well. These new contribution limits would be effective January 1, 2003, and  
23 would apply to contributions made on or after that date. The Commission seeks

1 comments on whether these increased contribution limits could apply to elections that  
2 occurred before the effective date of the increase in the contribution limits. For example,  
3 if the contribution limit were to be increased from \$2,000 to \$2,100, effective November  
4 3, 2004, and contributor X makes a \$2,000 contribution to candidate Y in October of  
5 2004, could contributor X make a \$100 contribution after November 3, 2004 designated  
6 for the general election, provided that candidate Y's principal campaign committee still  
7 has net debts outstanding?

8 BCRA also amends the provisions in the Act that establish the aggregate  
9 contributions that may be made by individuals. Section 441a(a)(3) of the Act previously  
10 permitted individuals to make no more than \$25,000 in aggregate contributions per  
11 calendar year. This section has been revised by BCRA to establish new bi-annual  
12 aggregate limits that permit individuals to make up to \$95,000 in contributions, including  
13 up to \$37,500 in contributions to candidates and their authorized committees and up to  
14 \$57,500 in contributions to any other committees. 2 U.S.C. 441a(a)(3)(A) and (B). The  
15 \$57,500 aggregate contribution limit contains a further restriction in that no more  
16 \$37,500 of this amount may be given to committees that are not the political committees  
17 of national political parties. 2 U.S.C. 441a(a)(3)(B).

18 Current 11 CFR 110.5(b) would be amended to incorporate the increased  
19 aggregate contribution bi-annual limits, which will be effective January 1, 2003.  
20 Proposed paragraph (b)(1)(i) would contain the new bi-annual aggregate limit for  
21 contributions to candidates and their authorized committees. Proposed paragraph  
22 (b)(1)(ii) would contain the new bi-annual aggregate limit for contributions to other  
23 political committees.



1           However, 2 U.S.C. 441a(i)(1)(C) and 441a-1(a)(1)(B) contain an important  
2       exception to the contribution limits that has implications for the bi-annual aggregate  
3       limits for individuals. Under these sections, the individual contribution limits to  
4       candidates for the U.S House of Representatives and U.S. Senate are increased if the  
5       candidate is opposing another candidate who makes expenditures from his or her personal  
6       funds above a certain threshold. Contributions made under these provisions do not apply  
7       to the individual contributor's bi-annual aggregate limits. 2 U.S.C. 441a(i)(1)(C) and  
8       441a-1(a)(1)(B). Proposed paragraph 110.5(b)(1)(iii) would reflect this exception, which  
9       will be addressed in greater detail in a separate NPRM concerning the so-called  
10      “millionaires’ amendment.”

11           Proposed paragraph (b)(2) of 11 CFR 110.5 would reference the increase if  
12      necessary in the bi-annual aggregate limits by the percent difference in the price index as  
13      described in proposed 11 CFR 110.17 (see the discussion below). Proposed paragraph  
14      (b)(3) would provide that the time period in which the price indexing applies also applies  
15      to the aggregation of contributions for purposes of the application of the bi-annual  
16      aggregate limits. An example of how the time period would operate for both the increase  
17      and the aggregation would also be included in proposed paragraph (b)(3). Proposed  
18      paragraph (b)(4) would restate the Commission's intention to publish information  
19      regarding the adjusted limits in the Federal Register and on the Commission's web site.

20      2. Increases in the Limits for Contributions by Party Committees to Senate Candidates  
21      (11 CFR 110.2)

22           Under pre-BCRA 2 U.S.C. 441a(h), the Republican and Democratic Senatorial  
23      campaign committees or the national committee of a political party or any combination of

1 such committees were permitted to contribute \$17,500 to a candidate for election or  
2 nomination to the U.S. Senate during the year of the election. BCRA amends this section  
3 of the Act to increase the amount that may be contributed by these committees to  
4 senatorial candidates to \$35,000 on or after January 1, 2003. Current 11 CFR 110.2(e),  
5 which contains this limit, would be amended to increase the limit to \$35,000.

6 3. Extension of Indexing to Inflation for Some Contribution Limitations (11 CFR 110.5  
7 and 110.17)

8 Pre-BCRA 2 U.S.C. 441a(c) mandated yearly indexing to inflation of the  
9 expenditure limitations established by 2 U.S.C. 441a(b) (the limits on expenditures by  
10 candidates for the office of President of the United States who accept public funding) and  
11 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party  
12 committees, or their subordinate committees in connection with the general election  
13 campaign of candidates for Federal office).

14 BCRA amends 2 U.S.C. 441a(c) to extend the inflation indexing to: the  
15 limitations for contributions made by persons under 2 U.S.C. 441a(a)(1)(A) and  
16 441a(a)(1)(B); the bi-annual aggregate contribution limits for individuals now found at 2  
17 U.S.C. 441a(a)(3); and the limitation for contributions made to U.S. Senate candidates by  
18 certain party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c)(1)(B). The adjustments  
19 for inflation for 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B), 441a(a)(3) and 441a(h) are to be  
20 made only in odd-numbered years and such increases will be in effect for the 2-year  
21 period beginning on the first day following the date of the last general election in the year  
22 preceding in which the amount is increased and ending on the date of the next general  
23 election. 2 U.S.C. 441a(c)(1)(C).

BCRA, however, presents a conflict concerning the interaction of 2 U.S.C. 441a(a)(3), which establishes the bi-annual aggregate contribution limits for individuals, and 2 U.S.C. 441a(c)(1)(C), which mandates indexing to inflation of these bi-annual aggregate limits. Section 441a(a)(3) of the Act specifically provides that the bi-annual aggregate limits for contributions made by individuals should apply during the period that begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. For example, the dollar aggregate limits operate from January 1, 2005 to December 31, 2006. However, the inflation indexing for this provision as applied by 2 U.S.C. 441a(c)(1)(C) would operate from the day after the general election to the date of the next general election, e.g. November 3, 2004 to November 7, 2006, after which date the next two year inflation indexing period would alter the bi-annual aggregate contribution limits again. Thus, these competing time limits seem to dictate different contributions limits for the period from November 3, 2004 to January 1, 2005 and could not be applied simultaneously. Therefore, the conflict between 2 U.S.C. 441a(a)(3) and 441a(c)(1)(C) must be resolved to determine the time period in which the bi-annual aggregate contribution limits apply.

It is one principle of legislative interpretation that where two provisions of a statute are in conflict, the conflicting provision which is last in time or last in order of arrangement prevails. See Inter-Continental Promotions v. MacDonald, 367 F.2d 293 (5<sup>th</sup> Cir. 1966). Following this principle, because 2 U.S.C. 441a(c)(1)(C) appears later than 2 U.S.C. 441a(a)(3) in order of arrangement, both in BCRA and as codified in the Act, 2 U.S.C. 441a(c)(1)(C) would determine the time period of the bi-annual contribution limits for 2 U.S.C. 441a(a)(3). Therefore, the proposed rules would set the time period

1 for the bi-annual contribution limits from the day after the general election, i.e. the first  
2 Tuesday following the first Monday in November of an even numbered year, to the date  
3 of the next general election, i.e. the first Tuesday following the first Monday in  
4 November of the next even numbered year. See proposed 11 CFR 110.5(b) and 110.17  
5 below. Under this approach, runoff elections following the general election would not  
6 postpone the increase in the annual contribution limits. The Commission seeks comment  
7 on whether this interpretation of the statutory language and the proposed time period for  
8 the bi-annual aggregate contribution limits is appropriate.

9 Another question for the interpretation of the BCRA amendments to 2 U.S.C.  
10 441a(c) relates to a timing issue in the administrative application of the inflation  
11 indexing. The increased contribution limits of 2 U.S.C. 441a(a)(1)(A) and (B),  
12 441a(a)(3), and 441a(h) apply to contributions made on or after January 1, 2003.  
13 However, under the interpretation outlined above, 2 U.S.C. 441a(c)(1)(C) requires that  
14 these same contribution limits be increased through indexing for inflation in odd-  
15 numbered years with the increase in effect starting with the day following the last general  
16 election in the previous year. This could imply that initial contribution limits authorized  
17 by BCRA to take legal effect on January 1, 2003, should also be increased by the  
18 difference in the price index. Comments are requested on this possible interpretation,  
19 which is not included in the proposed revisions to section 110.5 below. The Commission  
20 also invites comments on whether the increased limits produced by the indexing for  
21 inflation would apply to post-elections contributions made with respect to elections prior  
22 to the year the increase occurred was made but after date in which BCRA takes legal  
23 effect.

1 A further change in 2 U.S.C. 441a(c) is the introduction of a rounding provision  
2 for all the amounts that are increased by the indexing to inflation in 2 U.S.C. 441a. If the  
3 final amount is not a multiple of \$100, it is rounded to the nearest multiple of \$100.  
4 2 U.S.C. 441a(c)(1)(B)(iii).

5 The current regulation at 11 CFR 110.9(c) that describes the expenditure limits  
6 subject to inflation indexing does not include any of the inflation indexing discussed  
7 above. In order to address the price indexing for the new contributions and expenditures  
8 limitations in a comprehensive manner, the Commission proposes to add new section  
9 110.17 to track the changes to 2 U.S.C. 441a(c). In this new section 110.17, proposed  
10 paragraph (a) would restate current section 110.9(c) for the price index increases that  
11 previously existed for the party committee and Presidential candidate spending limits  
12 established by 11 CFR 110.7 and 110.8.

13 However, proposed paragraph (a) would contain one important change from  
14 current 11 CFR 110.9(c). Section 110.9(c) had incorrectly stated that the expenditure  
15 limitations established by sections 110.7 and 110.8 would be increased by the annual  
16 percent difference of the price index, as certified to the Commission by the Secretary of  
17 Labor. Section 441a(c) of the Act does not use an annual percent difference of the price  
18 index to calculate the increases. Instead, it requires the use of the percent difference  
19 between the price index for the 12 months preceding the beginning of the calendar year in  
20 which the change is made and the base period. For party committee expenditures  
21 limitations and Presidential candidate expenditures limitations, the base period is  
22 calendar year 1974 with the change being in effect for that calendar year. Proposed

1 paragraph (a) would correctly state the standard to be applied and would delete the term  
2 “annual” from the regulation.

3 Proposed paragraph (b) of new section 110.17 would track 2 U.S.C. 441a(c)(1)(B)  
4 and state that the following contributions limits would be indexed to inflation: proposed  
5 11 CFR 110.1(b)(1) (limits for individuals contributing to candidates and authorized  
6 political committees); proposed 110.1(c)(1) (limits for contributions made to national  
7 party committees); proposed 110.2(e) (limits for contributions made by party committees  
8 to Senatorial candidates); and proposed 110.5 (bi-annual aggregate contribution limits for  
9 individuals). Consequently, current paragraph 110.9(c) would be removed.

10 Proposed section 110.17(b)(1) would specify that these contribution limitations  
11 would be increased during odd numbered years and that the increased limit would be in  
12 effect for a two-year period. Proposed paragraph (b)(2) would establish that 2001 is the  
13 base year for the calculation of the price index difference. Proposed paragraph 110.17(c)  
14 would implement the new rounding provision found at 2 U.S.C. 441a(c)(B)(iii).

15 The Act at 2 U.S.C. 441a(c)(2)(A) and proposed paragraph 110.17(d) specifically  
16 identify the price index as the average over a calendar year of the Consumer Price Index  
17 (all items-United States city average) published by the Bureau of Labor Statistics. The  
18 Department of Labor computes the CPI using two population groups: All Urban  
19 Consumers (CPI-U) and Clerical Workers (CPI-W). The CPI-U represents  
20 approximately 87% of the total United States population while the CPI-W, a subset of the  
21 CPI-U, represents 32% of the total United States population.<sup>3</sup> While neither the Act nor

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<sup>3</sup> The CPI published by the Department of Labor may be found over the Internet at  
<http://www.bls.gov/cpi/home.htm>.

1 BCRA have specified which population group is to be used, the Commission has  
2 historically used the more inclusive CPI-U since that would seem the best method to  
3 calculate changes in the affected limitation. The Commission invites comments on  
4 whether this or an alternative approach would be preferable.

5 Proposed paragraph 110.17(e) would state that the Commission would provide  
6 information concerning the amount of the adjusted contribution limitations through the  
7 Federal Register and the Commission's web site.

8 In order to alert the reader to these contribution limit increases, each section  
9 containing a contribution increase that is subject to the indexing also contains a new  
10 paragraph referring to these increases. These would be proposed paragraphs  
11 110.1(b)(1)(i), (ii), and (iii); (c)(1)(i), (ii), and (iii); 110.2(e)(2); and 110.5(b)(2).

### 12 13 **Prohibition on Contributions by Minors**

14 Senator McCain, a primary sponsor of BCRA, stated during the Senate debate that  
15 the prohibition on contributions by minors is intended to prevent evasion of FECA's  
16 contribution limits and "restores the integrity of the individual contribution limits by  
17 preventing parents from funneling contributions through their children, many of whom  
18 are simply too young to make such contributions knowingly." 148 Cong. Rec. S2145-  
19 2146 (daily ed. March 20, 2002).

20 During the debate, BCRA's sponsors acknowledged that many individuals  
21 younger than 18 years old enthusiastically supported candidates and pointed out that they  
22 could continue to do so by volunteering on campaigns and expressing their views through  
23 speaking and writing. See 148 Cong. Rec. S2146 (daily ed. March 20, 2002).

1    1. 11 CFR 110.19 Contributions by Minors

2            BCRA prohibits minors (individuals 17 years old and younger) from making a  
3    contribution to a candidate or a contribution or donation to a political party committee.  
4    See 2 U.S.C. 441k. The Commission is proposing to place the regulations that address  
5    this prohibition in a new section 11 CFR 110.19.

6            Under current regulations, a child under 18 years of age may make contributions  
7    in accordance with the limits of the Act provided that the child voluntarily and willingly  
8    makes the decision to contribute, the funds, goods or services contributed are owned or  
9    controlled exclusively by the child, and the contribution is not made from the proceeds of  
10   a gift given to the child to make a contribution or is not in any way controlled by an  
11   individual other than the child. See current 11 CFR 110.1(i)(2). Consequently, the  
12   proposed rules would amend current 11 CFR 110.1(i)(2) to conform with BCRA. See  
13   below for discussion of the proposed conforming amendments.

14           Proposed paragraph (a) of new 11 CFR 110.19 would address contributions by  
15   minors to candidates. That paragraph would state that an individual who is 17 years old  
16   or younger must not make a contribution to a candidate for Federal office. Proposed  
17   paragraph (a) would further clarify that a contribution to a Federal candidate includes a  
18   contribution to a candidate's principal campaign committee, to any other authorized  
19   committee of that candidate, or to any entity directly or indirectly established, financed,  
20   maintained or controlled by one or more Federal candidates.

21           The Commission believes that prohibiting contributions by minors to entities  
22   directly or indirectly established, financed, maintained or controlled by a Federal  
23   candidate is within the scope of BCRA, but it seeks comment on this issue. The



1 Commission also seeks comment on whether minors who are emancipated under State  
2 law should be exempt from the prohibition. A condition of emancipation under State law  
3 usually entails a showing that a minor manages his or her own financial affairs, which  
4 would lessen the likelihood that a parent would funnel contributions through the  
5 emancipated minor child. Finally, the Commission seeks comment on whether the  
6 regulations should make clear that the relevant time for determining whether a minor has  
7 made a prohibited contribution is the age of the minor at the time he or she makes a  
8 contribution, i.e., when the minor relinquishes control over the contribution. See 11 CFR  
9 110.1(b)(6).

10 Proposed section 110.19(b) addresses contributions and donations made by  
11 minors to political party committees. Because BCRA specifically prohibits donations as  
12 well as contributions by minors to “a committee of a political party,” proposed paragraph  
13 (b) states that individuals 17 years old or younger may not make contributions or  
14 donations to a national, State, district or local committee of a political party. Thus, as  
15 proposed, the regulations would interpret BCRA as prohibiting minors from making any  
16 donations whatsoever to non-Federal accounts of State, district and local party  
17 committees. To the extent that a non-Federal account of a State or local party committee  
18 may contain Levin funds, i.e., funds raised under State law but limited under Federal law  
19 to \$10,000 per contributor, to finance certain Federal election activity such as voter  
20 registration and get-out-the vote activities, prohibiting donations by minors to State,  
21 district and local party committees has a clear nexus to Federal elections. It should be  
22 noted that this interpretation may preempt certain State laws to the extent that States  
23 permit minors to donate to state and local political parties.

1           The Commission seeks comment, however, as to whether a narrower construction  
2 of the prohibition on donations by minors to state, district, and local political party  
3 committees may be warranted. For example, the prohibition on donations by minors in 2  
4 U.S.C. 441k could be interpreted to apply only to donations used to conduct activities  
5 that have some effect on Federal elections. Consequently, under this interpretation, a  
6 minor may make a donation only if the recipient state, district, or local party committee  
7 can show through a reasonable accounting method or by establishing a separate account  
8 that the donation is used exclusively for purposes that have no effect upon any Federal  
9 election to the extent permitted by State law. It is important to note, however, that a  
10 number of State laws treat contributions by minors as contributions by their parent(s) or  
11 guardian(s). See for example, Kan. Stat. Ann. 25-4153(c) and Okla. Stat. t. 74, 257:10-1-  
12 2(a)(1) and (h)(2).

13           Proposed 11 CFR 110.19(c) addresses contributions to other political committees,  
14 such as separate segregated funds and non-connected committees. The proposed rule  
15 would prohibit an individual who is 17 years old or younger from making a contribution  
16 to any such political committee if the contribution is earmarked or otherwise directed to  
17 one or more Federal candidates or political committees or organizations covered in  
18 proposed paragraphs (a) and (b) .

19           Proposed 11 CFR 110.19(d) would make clear that minors are not prohibited from  
20 volunteering their services to Federal candidates, political party committees or other  
21 political committees. The exclusion of volunteer services is based on the statement made  
22 by Senator McCain in the BCRA Senate debate, as noted above, that Congress intended  
23 that minors could continue to participate in campaigns by volunteering.

1 Proposed paragraph (e) would define an entity “directly or indirectly established,  
2 financed, maintained, or controlled” by a candidate for purposes of the prohibition on  
3 minors’ contributions to candidates as one that meets the definition of “directly or  
4 indirectly establish, finance, maintain or control” at 11 CFR 300.2(c). For the definition,  
5 see Final Rules for “Excessive and Prohibited Contributions: Non-Federal Funds or Soft  
6 Money,” 67 Fed. Register 49063 (July 29, 2002).

7 2. Conforming Amendments to 11 CFR 110.1(i)

8 As discussed above, beginning on November 6, 2002, BCRA prohibits  
9 individuals who are 17 years old or younger from making contributions to Federal  
10 candidates and contributions or donations to political party committees. However,  
11 BCRA also provides that this prohibition will not apply with respect to runoff elections,  
12 recounts or election contests resulting from elections held prior to November 6, 2002.  
13 See 2 U.S.C. 431 note. Consequently, the current regulation concerning contributions by  
14 minors at 11 CFR 110.1(i)(2) would be amended by adding new paragraph (i)(3) to  
15 clarify that the provisions of 11 CFR 110.1(i)(2) would continue to apply to contributions  
16 made by minors to authorized committees and political party committees in connection  
17 with runoff elections, recounts or election contests resulting from elections held prior to  
18 November 6, 2002. It would also clarify that contributions made by minors to authorized  
19 committees and political party committees for all other elections held after November 6,  
20 2002 would be governed by proposed 11 CFR 110.19.

21 Because 2 U.S.C. 441k specifically prohibits contributions by minors to  
22 candidates and political party committees rather than to political committees in general,  
23 the proposed rules contemplate that minors could continue to make contributions to

1 political committees other than authorized committees or political party committees in  
2 accordance with the requirements of 11 CFR 110.1(i)(2). Consequently, 11 CFR  
3 110.1(i)(2) would be amended to reflect this interpretation. The Commission seeks  
4 comment on whether 2 U.S.C. 441k could be interpreted to also prohibit contributions by  
5 minors to these other political committees.

6  
7 **Prohibition on Contributions, Donations, Expenditures and Disbursements by**  
8 **Foreign Nationals (11 CFR 110.20)**

9 As indicated by the title of section 303 of BCRA, “Strengthening Foreign Money  
10 Ban,” Congress amended 2 U.S.C. 441e to further delineate and expand the ban on  
11 campaign contributions and donations by foreign nationals. BCRA expressly applies the  
12 ban to contributions and donations solicited or made directly or indirectly to candidates  
13 for State and local as well as Federal office. 2 U.S.C. 441e(a)(1)(A) and (a)(2).  
14 Furthermore, the prohibition is expressly applied to contributions and donations to  
15 committees of political parties and is extended to disbursements for electioneering  
16 communications as well as to expenditures and independent expenditures. 2 U.S.C.  
17 441e(a)(1)(B) and (C).

18 Consequently, the Commission proposes to amend 11 CFR part 110 to implement  
19 the revised statutory provision. The proposed rules would remove and reserve 11 CFR  
20 110.4(a), the current regulations that address foreign nationals. In its place, new section  
21 110.20 would be created to describe the prohibitions on contributions, donations,  
22 expenditures, independent expenditures, and disbursements by foreign nationals. This  
23 new section would also incorporate the provision in 2 U.S.C. 441e(a)(2) which prohibits

1 persons from soliciting, accepting, or receiving contributions and donations from foreign  
2 nationals.

3 1. “Indirectly” versus “through any other person”

4 BCRA bans foreign national contributions and donations made “directly or  
5 indirectly.” Former 2 U.S.C. 441e(a) banned foreign national contributions made directly  
6 “or through any other person.” It is unclear what Congress intended in changing the  
7 terminology. While both phrases would address contributions made through conduits,  
8 the term “indirectly” could have a broader scope because the general purpose of section  
9 303 of BCRA is to strengthen the ban on contributions and donations by foreign  
10 nationals. Comments are solicited as to whether “indirectly” should be construed to have  
11 a broader meaning than “through any other person” and if so, whether the rules should  
12 explicitly reflect this interpretation by defining “indirectly.” Please note that the  
13 proposed rule does not define “indirectly.”

14 Given the above-cited statutory provisions, proposed paragraph 110.20(a) would  
15 explicitly state that foreign nationals shall not, directly or indirectly, make contributions  
16 or donations in connection with any election for Federal, State, or local office. Because  
17 BCRA retains the provision on express or implied promise, proposed paragraph (a)  
18 would also include that language. Additionally, proposed paragraph (a) would define  
19 “election” in accordance with 11 CFR 100.2 and proposed 11 CFR 110.20(j). While  
20 current section 100.2 addresses Federal elections, proposed paragraph (j) would define  
21 “election” generically so that it would include State and local elections.

1    2. Impact of the Addition of “Donation” in the Foreign National Ban

2            In BCRA, Congress added the “donation” of funds by foreign nationals to its prior  
3    ban on “contributions” by foreign nationals. In 2000, the Commission included in its  
4    legislative recommendations to Congress a proposal that 2 U.S.C. 441e be amended to  
5    clarify that the statutory prohibition on foreign national contributions extends to State and  
6    local elections. The Commission noted that this could be accomplished by changing  
7    “contribution” to “donation.”

8            In BCRA, Congress chose to retain “contribution” and to add “donation” as a  
9    prohibited activity, while also explicitly listing “a Federal, State, or local election” as the  
10   elections in connection with which such contributions and donations must not be made.  
11   By means of this two-fold approach, Congress left no doubt as to its intention to prohibit  
12   foreign national support of candidates and their committees for all Federal, State, and  
13   local elections.

14           According to the section-by-section analysis of BCRA by Senator Feingold, the  
15   revision to 2 U.S.C. 441e “prohibits foreign nationals from making any contribution to a  
16   committee of a political party or any contribution in connection with federal, state or  
17   local elections, including any electioneering communications. This clarifies that the ban  
18   on contributions [by] foreign nationals applies to soft money donations.” (Statement of  
19   Sen. Feingold, 148 Cong. Rec. S1991-1997 (daily ed. Mar. 18, 20020)).

20           While final rules entitled “Prohibited and Excessive Contributions: Non-Federal  
21   Funds or Soft Money” define “donation” at 11 CFR 300.2(e) for purposes of 11 CFR part  
22   300, the proposed rules do not define “donation” for purposes of this rulemaking. The  
23   Commission seeks comments on whether it should include a definition of “donation” and,

1 if so, should the definition be limited to proposed 11 CFR 110.20 or 11 CFR part 110, or  
2 should it be included in 11 CFR part 100 and have general applicability to all of the  
3 Commission's regulations.

#### 4 3. Effects on Committees of Political Parties

5 BCRA also expressly extends the prohibition on foreign national contributions  
6 and donations to those made to committees of political parties, with foreign nationals  
7 prohibited from making any donations to such committees. 2 U.S.C. 441e(a)(1)(B). The  
8 particular committees covered would include the national party committees, the national  
9 congressional campaign committees, as well as all State, district, local, and subordinate  
10 committees. In light of the addition of "donation" to the statutory language, it appears  
11 that the prohibition on foreign national funds would extend to all political party  
12 organizations, whether or not they are political committees under the Act. In addition,  
13 because many party committee activities affect Federal, State, and local elections, this  
14 interpretation is supported by, and would reinforce, the prohibition in 2 U.S.C.  
15 441e(a)(1)(A) on foreign national contributions and donations in connection with a  
16 Federal, State, or local election. Consequently, proposed 11 CFR 110.20(b) would adopt  
17 this interpretation. Comments are requested on whether the proposed rules should adopt  
18 a different interpretation.

1 4. Expenditures, Independent Expenditures, and Disbursements for Electioneering  
2 Communications

3 BCRA prohibits a foreign national from making “an expenditure, independent  
4 expenditure, or disbursement for an electioneering communication.”<sup>4</sup> 2 U.S.C.  
5 441e(a)(1)(C). This provision, read alone, could be construed so that “expenditure,”  
6 “independent expenditure,” and “disbursement” modify “for an electioneering  
7 communication,” therefore narrowing the scope of “expenditure” and “independent  
8 expenditure” to include only “electioneering communications.” BCRA, however,  
9 expressly exempts from the definition of “electioneering communication” “a  
10 communication which constitutes an expenditure or an independent expenditure under  
11 this Act . . . .” 2 U.S.C. 434(f)(3)(B)(ii). Thus, statutory construction would require  
12 that the phrase “for an electioneering communication” at 2 U.S.C. 441e(a)(1)(C) is read  
13 as modified only by the term “disbursement,” with the prohibitions against an

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<sup>4</sup> BCRA defines “electioneering communication” as a “broadcast, cable, or satellite communication” that “refers to a clearly identified candidate for Federal office,” that is made within particular time frames, and that is targeted to the relevant electorate if it refers to a candidate other than those for the office of President or Vice-President. 2 U.S.C. 434(f)(3)(A)(i)(I). For a discussion of electioneering communications, see the Notice of Proposed Rulemaking entitled “Electioneering Communication,” 67 Fed. Register 51131 (August 7, 2002).



1 “expenditure” or an “independent expenditure” being general in scope, i.e., not limited to  
2 electioneering communications.

3 Consequently, proposed 11 CFR 110.20(d) would prohibit expenditures,  
4 independent expenditures, and disbursements<sup>5</sup> by foreign nationals for activities in  
5 connection with Federal, State, or local elections. Proposed paragraph (e) would  
6 specifically prohibit disbursements for electioneering communications by foreign  
7 nationals.

## 8 5. Other Disbursements

9 BCRA expressly prohibits all expenditures and independent expenditures by  
10 foreign nationals, and also prohibits all disbursements by foreign nationals for  
11 electioneering communications. Section 431(9)(A)(1) of FECA defines “expenditure” as  
12 “any purchase, payment, . . . or anything of value made for the purpose of influencing  
13 any election for Federal office,” and 2 U.S.C. 431(17) defines “independent expenditure”  
14 as “an expenditure by a person expressly advocating the election or defeat of a clearly  
15 defined candidate which is made without cooperation or consultation with any  
16 candidate . . . .” Thus, the terms “expenditure” and “independent expenditure” apply  
17 only to activities related to Federal elections. In contrast, “disbursement,” a term used in  
18 both FECA and BCRA, but not defined in the statutes, is now defined in new 11 CFR  
19 300.2(d) as “any purchase or payment made by (1) a political committee; or (2) any other  
20 person, including an organization that is not a political committee, that is subject to the  
21 Act.” This definition of “disbursement” covers all payments including “expenditures,”  
22 “independent expenditures,” and those made in connection with non-Federal elections.

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<sup>5</sup> See below for discussion on disbursements.

1           However, BCRA does not contain an express prohibition against foreign national  
2     disbursements for activities other than electioneering communications. This omission  
3     leaves in question the status of disbursements by foreign nationals for activities in  
4     connection with State and local elections that are by definition not “expenditures” or  
5     “independent expenditures” because they are not made to influence Federal elections.  
6     How the Commission addressed a similar issue in the past, however, provides guidance  
7     on this question.

8           Former 2 U.S.C. 441e contained no express prohibition against expenditures by  
9     foreign nationals. In response to this statutory silence, the Commission in 1989 revised  
10    11 CFR 110.4(a) to state that foreign nationals were prohibited from making expenditures  
11    as well as contributions. The Explanation and Justification for that amendment stated:  
12    “The FECA generally prohibits expenditures when it prohibits contributions by a specific  
13    category [of] persons, thereby ensuring that the person cannot accomplish indirectly what  
14    they are prohibited from doing directly.” 54 Fed. Register 8581 (Nov. 24, 1989). The  
15    Explanation and Justification continued: “Nothing in Section 441e’s legislative history  
16    suggests that Congress intended to deviate from the FECA’s general pattern of treating  
17    contributions and expenditures in parallel fashion.” Id.

18          As discussed above, BCRA adds “donations” to the activities prohibited to  
19    foreign nationals, this being one way in which the reach of the statute is extended to State  
20    and local elections to which the term “contributions” does not apply. As was the case  
21    earlier with the FECA, there is nothing in BCRA that would indicate an intent on the part  
22    of Congress to treat disbursements for State or local elections any differently than it now  
23    treats expenditures for Federal elections. Therefore, the Commission in the regulations

1 proposes to treat “donations” and “disbursements” in the same parallel fashion as it has  
2 treated “contributions” and “expenditures” in the past.

3 Consequently, proposed 11 CFR 110.20(d) would also prohibit disbursements by  
4 foreign nationals whether or not they are made for electioneering communications.

5 Comments are sought as to whether a definition of “disbursement” using language similar  
6 to that in 11 CFR 300.2(d) should be included in 11 CFR 110.20.

#### 7 6. Building Funds

8 The FECA prohibits foreign nationals from making any contribution or donation  
9 to national party committees, including donations for the purchase or construction of an  
10 office building. See 2 U.S.C. 441e. In addition, new 11 CFR 300.35(a) explicitly  
11 provides that the prohibitions in BCRA against contributions and donations by foreign  
12 nationals do not permit party committees to spend funds contributed or donated by  
13 foreign nationals for the purchase or construction of State or local party committee office  
14 buildings. Final Rule and Explanation and Justification, 67 Fed. Register 49101, 49127  
15 (July 29, 2002). The Explanation and Justification for 11 CFR 300.35 indicates that this  
16 prohibition on foreign national funding also extends to in-kind contributions or donations.  
17 Consistent with new 11 CFR 300.35(a), the Commission proposes to add paragraph (f) to  
18 11 CFR 110.20 to explicitly state that foreign nationals are prohibited from making  
19 contributions or donations to committees of a political party for the construction or  
20 purchase of any office building.

1    7. Soliciting, Accepting, or Receiving Contributions or Donations from Foreign  
2    Nationals; Assisting Foreign Nationals to Make Contributions or Donations

3            BCRA prohibits any person from soliciting, accepting, or receiving from a foreign  
4    national a contribution or donation made in connection with a Federal, State, or local  
5    election, or made to a party committee. 2 U.S.C. 441e(a)(2). However, both the former  
6    and the current foreign national prohibitions in 2 U.S.C. 441e are silent as to the degree  
7    of knowledge, if any, that such person should be shown to have had regarding the foreign  
8    national status of the contributor or donor before the person will be deemed to have  
9    violated the statute. In contrast, other parts of FECA and BCRA expressly provide that  
10   knowledge is an element of the violation.<sup>6</sup>

11           The Commission in recent years has addressed the issue of required knowledge in  
12   a number of complex enforcement matters arising under former 2 U.S.C. 441e(a). In  
13   these matters, the Commission has confronted the questions of whether the statute or the  
14   First Amendment requires a person to have had knowledge of the contributor or donor's  
15   foreign national status in order to have been in violation of the foreign-national  
16   prohibition, and, if so, what degree of knowledge was required. Should, for example,  
17   actual knowledge at the time of a solicitation or receipt have been a prerequisite for a  
18   violation, or should the person have been required to follow up on certain factors that  
19   would have raised the suspicions of an objective observer?

20           Whether the foreign national prohibition as amended by BCRA contains a  
21   knowledge requirement is an important issue that may affect the implementation of this

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<sup>6</sup> “No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section . . . .” 2 U.S.C. 441a(f) (emphasis added).

1 prohibition. One alternative is to assume, given the silence in both FECA and BCRA on  
2 this question, that Congress intended this to be a strict liability statute. The fact that  
3 Congress has used “knowingly” in other provisions of FECA and BCRA but did not  
4 include this standard with regard to the solicitation, acceptance or receipt of foreign  
5 national contributions and donations could be construed as intent not to require  
6 knowledge in this regard. However, an exception to the plain meaning rule is that it is  
7 not applied when an injustice would result. Id. Based upon Commission enforcement  
8 experience with political committees, and, in particular, with the involvement of  
9 volunteers in the solicitation and receipt of contributions and donation, a knowledge  
10 requirement, and related standards for the levels of knowledge to be required, may  
11 produce a less harsh result than a strict liability standard. Proposed 11 CFR 110.20(g),  
12 discussed below, would include a knowledge requirement with three different degrees of  
13 knowledge. Comments are sought regarding the addition of a knowledge requirement  
14 and of standards to be applied in determining whether such knowledge existed in a  
15 particular situation.

16       Additionally, the foreign national prohibition raises issues concerning the liability  
17 of persons who knowingly assist foreign nationals in making contributions or donations.  
18 Recently the Commission has addressed situations in which the liability of someone who  
19 served as a conduit or intermediary for a foreign national contribution was in question  
20 because he or she had not technically solicited, accepted or received the contribution at  
21 issue. Section 441e of FECA does not explicitly address those who assist others to  
22 violate its prohibition on foreign national contributions and donations. However, the  
23 Commission has taken the position in enforcement matters that, because 2 U.S.C. 441e

1 prohibits foreign nationals from making contributions directly or through another person,  
2 and because the statute also prohibits persons from soliciting, accepting or receiving such  
3 contributions or donations, even a U.S. citizen's use of money acquired from a foreign  
4 national is prohibited, if that money was acquired for the purpose of enabling the foreign  
5 national to make political contributions.

6 Accordingly, proposed 11 CFR 110.20(g)(1) would prohibit any person from  
7 knowingly soliciting, accepting or receiving a contribution or donation from a foreign  
8 national. Proposed 11 CFR 110.20(g)(2) would prohibit any person from knowingly  
9 acting as a conduit or intermediary for receipt of a contribution or donation from a  
10 foreign national. Proposed 11 CFR 110.20(g)(3) would prohibit any person from  
11 knowingly provide substantial assistance with regard to the making of a contribution or  
12 donation by a foreign national.

13 Proposed paragraph (g)(4) would set forth the standards to be applied in  
14 determining whether the knowledge required by proposed paragraphs (g)(1), (2), and (3)  
15 exists in particular situations. Proposed paragraph (g)(4)(i) through (iii) would provide  
16 three alternative ways, any one of which would establish that a person has knowingly  
17 solicited, accepted or received a contribution or donation from a foreign national, or that  
18 a person knowingly acted as a conduit or intermediary for a foreign national to make a  
19 contribution or donation.

20 The first knowledge standard at proposed paragraph (g)(4)(i) would be that of  
21 actual knowledge. The second standard at proposed paragraph (g)(4)(ii) would require  
22 awareness on the part of the person soliciting, accepting or receiving a contribution or  
23 donation of certain facts that would lead a reasonable person to conclude that there is a

1 substantial probability that the contribution or donation has come from a foreign source.  
2 The third standard at proposed paragraph (g)(4)(iii) would address situations in which the  
3 person soliciting, accepting or receiving a contribution is or becomes aware of facts that  
4 should have led any reasonable person to inquire about the status of the contributor or  
5 donor; however, the solicitor or recipient failed to so inquire. This third alternative  
6 would be in effect a willful blindness standard covering situations in which a known fact  
7 may not equal a substantial probability of illegality but at least should prompt an inquiry.  
8 Proposed paragraph (g)(5) would set out several categories of facts that are intended to be  
9 illustrative of the types of information that should lead a recipient to question the origins  
10 of a contribution or donation under proposed paragraph (g)(4)(ii) or (iii).

11 Comments are requested as to whether the standards or levels of knowledge at  
12 proposed paragraph (g)(4) are appropriate and whether there are other potential facts that  
13 should be added to those at proposed paragraph (g)(5). Further, comments are requested  
14 as to whether the regulation should expressly require that recipient candidates and  
15 committees actively seek information about the nationality of contributors and donors  
16 whenever one of the factors listed is at issue.

17 In addition, comments are sought as to whether the Commission should  
18 incorporate into proposed section 110.20(g) the definition of “solicit” in 11 CFR  
19 300.2(m),<sup>7</sup> whether it should leave the term undefined, or whether it should give the term  
20 a more expansive or a narrower reading in this context.

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<sup>7</sup> The definition is part of the recently adopted final rules entitled “Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,” 67 Fed. Register 49063 (July 29, 2002).

1 Proposed 11 CFR 110.20(h) would retain the current prohibition at 11 CFR  
2 110.4(a)(3) on participation by foreign nationals in the decision-making process of any  
3 person, including entities such as corporations, labor organizations or political  
4 committees, related to Federal and non-Federal election-related activities. Foreign  
5 nationals would thus continue to be prohibited from taking part in decisions about  
6 contributions to any candidates or committees and about expenditures made in support of,  
7 or in opposition to, such candidates or committees. Foreign nationals would also  
8 continue to be prohibited from involvement in the direct management of a political  
9 committee, including a separate segregated fund and a non-connected committee.

#### 10 8. Definitions

11 Proposed new 11 CFR 110.20(i) would retain the definition of “foreign national”  
12 currently found at 11 CFR 110.4(a)(4). Proposed 11 CFR 110.20(i)(1) and (2) would  
13 include the current exemptions for certain foreign principals as provided in 22 U.S.C.  
14 611(b) and for permanent resident aliens as defined in 8 U.S.C. 1101(a)(20). At proposed  
15 11 CFR 110.20(i)(3), however, the definition of “foreign national” would be narrowed by  
16 the exclusion of U.S. nationals as they are in turn defined in 8 U.S.C. 1101(a)(22).<sup>8</sup>

17 Proposed new 11 CFR 110.20(j) would define “election” for purposes of this  
18 section. Although “election” is defined at 11 CFR 100.2, the definition at that section is  
19 stated expressly in terms of Federal elections. New 11 CFR 110.20(j) would extend the  
20 overall definition to include elections at all political levels.

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<sup>8</sup> “National of the United States” is defined as “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” 8 U.S.C. 1101(a)(22).



1    9. Donations to Presidential Inaugural Committees

2           Section 308 of BCRA amends section 510 of Title 36, United States Code, to  
3   prohibit Presidential inaugural committees from accepting donations from foreign  
4   nationals as defined in 2 U.S.C. 441e(b). 36 U.S.C. 510(c). Although section 308 does  
5   not amend Title 2, United States Code, its prohibition on donations by foreign nationals  
6   to Presidential inaugural committees, including its reference to the definition of “foreign  
7   national” in the Act, fits naturally within  
8   11 CFR 110.20. Therefore, proposed new 11 CFR 110.20(c) has been created for this  
9   purpose.

10          Section 308 does not include a prohibition against the making of donations to  
11   Presidential inaugural committees by foreign nationals. Comments are sought as to  
12   whether the regulations should include a prohibition in this regard.

13   10. U.S. Subsidiaries of Foreign Corporations

14          The Commission has considered whether to incorporate into this rulemaking the  
15   issues raised by contributions and donations made by U.S. subsidiaries of foreign  
16   corporations. Given the complexities of these issues, the short timetable available to the  
17   Commission for formulating and issuing the basic set of rules required by BCRA, and the  
18   fact that BCRA does not mandate a rule-making regarding U.S. subsidiaries, the  
19   Commission has determined to postpone this aspect of foreign national involvement in  
20   the election process until after the December 22, 2002 deadline for issuance of all BCRA  
21   regulations.

1     **Conforming Amendment to 11 CFR 110.9**

2             Current 11 CFR 110.9, entitled “Miscellaneous provisions,” includes four  
3 paragraphs that address: (a) violations of the contribution limitations; (b) fraudulent  
4 misrepresentations; (c) price index increase; and (d) voting age population. Because this  
5 rulemaking and other BCRA rulemaking projects<sup>9</sup> would amend and move the provisions  
6 on fraudulent misrepresentation, the price index increase, and voting age population, only  
7 paragraph (a) of section 110.9, addressing violations of the contribution limitations,  
8 would remain. Therefore, the proposed rules would amend section 110.9 so that it  
9 contains only the provisions of paragraph (a) and the title of section 110.9 would be  
10 amended to “Violations of limitations” to reflect that change.

11             The proposed rules would also add the word “knowingly” in two places pertaining  
12 to the acceptance of contributions in violation of the limitations and prohibitions set forth  
13 in 11 CFR part 110. This revision would better reflect the knowledge requirement in  
14 2 U.S.C. 441a(f) and 441f.

15  
16     **Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

17     **[Regulatory Flexibility Act]**

18             The Commission certifies that the attached proposed rules, if promulgated, will  
19 not have a significant economic impact on a substantial number of small entities. The  
20 basis of this certification is that the national, State, and local party committees of the two

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<sup>9</sup> The BCRA rulemaking project entitled “Other Provisions” will address the fraudulent misrepresentation provisions and the BCRA rulemaking project entitled “Coordination and Independent Expenditures” will address the voting age population provisions.

1 major political parties are not small entities under 5 U.S.C. 601 because they are not  
2 small businesses, small organizations, or small governmental jurisdictions.

3 Minors and most of foreign nationals are individuals, and therefore, not small  
4 entities. Furthermore, the proposed rules, which are based on statutory language, clarify  
5 and describe in further detail the already existing ban on contributions by foreign  
6 nationals. Additionally, to the extent that there may be foreign nationals that may fall  
7 within the definition of “small entities,” their numbers are not substantial, particularly the  
8 number that would make a donation, expenditure, independent expenditure, or  
9 disbursement in connection with a Federal, State, or local election.

10 In addition, the small entities to which the rules would apply would not be unduly  
11 burdened by the proposed increased contribution levels, which would give such small  
12 entities more latitude in the amount they contribute. The increase in contribution limits  
13 for individuals and national party committees would not create a burden for them even if  
14 they were small entities.

15  
16 **List of Subjects**

17 11 CFR Part 110

18 Campaign funds, and political committees and parties.  
19

For reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

**PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

1. The authority citation for part 110 would be revised to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

2. Section 110.1 would be amended by revising paragraphs (a), (b)(1), (c)(1) and (i) to read as follows:

**§ 110.1 Contributions by persons other than multicandidate political committees**  
**(2 U.S.C. 441a(a)(1)).**

(a) Scope. This section applies to all contributions made by any persons as defined in 11 CFR 110.10, except multicandidate political committees as defined in 11 CFR 110.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR ~~110.4~~ 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) Contributions to candidates; designations; and redesignations.

(1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office ~~which that~~, in the aggregate, exceed ~~\$1,000~~ \$2,000.

(i) The limitation in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year

1 period beginning on the first day following the date of the last  
2 general election in the year preceding the year in which the amount  
3 is increased and ending on the date of the next general election.  
4 For example, an increase in the limitation made in January 2005 is  
5 effective from November 3, 2004 to November 7, 2006.

6 (iii) In every odd numbered year, the Commission will publish in the  
7 Federal Register the amount of the contribution limit in effect and  
8 place such information on the Commission's web site.

9 \* \* \* \* \*

10 (c) Contributions to political party committees.

11 (1) No person shall make contributions to the political committees established  
12 and maintained by a national political party in any calendar year, ~~which~~  
13 that in the aggregate exceed \$20,000 \$25,000.

14 (i) The limitation in paragraph (c)(1) of this section shall be increased  
15 by the percent difference in the price index in accordance with 11  
16 CFR 110.17.

17 (ii) The increased limitation shall be in effect for the 2-year period  
18 beginning on the first day following the date of the last general  
19 election in the year preceding the year in which the amount is  
20 increased and ending on the date of the next general election. For  
21 example, an increase in the limitation made in January 2005 is  
22 effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the Federal Register the amount of the contribution limit in effect and place such information on the Commission's web site.

\* \* \* \* \*

(i) Contributions by spouses and minors.

(1) The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

(2) Minor children (children under 18 years of age) may make contributions to any political committee, other than an authorized committee or a political party committee, which in the aggregate do not exceed the limitations on contributions of this section, if-

(i) The decision to contribute is made knowingly and voluntarily by the minor child;

(ii) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(iii) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

(3) Paragraph (i)(2) of this section will apply to contributions made by minor children to authorized committees and political party committees for

runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. For all other elections held after November 6, 2002, contributions by minor children to authorized committees and political party committees are prohibited. See 11 CFR 110.19.

\* \* \* \* \*

3. Section 110.2 would be amended by revising paragraph (e) to read as follows:

**§ 110.2 Contributions by multi-candidate political committees (2 U.S.C. 441a(a)(2)).**

\* \* \* \* \*

(e) Contributions by political party committees to Senatorial candidates.

(1) Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of ~~\$17,500~~ \$35,000 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(2) The limitation in paragraph (e)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending

1 on the date of the next general election. For example, an increase in the  
2 limitation made in January 2005 is effective from November 3, 2004 to  
3 November 7, 2006. In every odd numbered year, the Commission will  
4 publish in the Federal Register the amount of the contribution limit in  
5 effect and place such information on the Commission's web site.

6 \* \* \* \* \*  
7 4. Section 110.4 would be amended by revising the section title and by removing and  
8 reserving paragraph (a).

9 **§ 110.4 Prohibited contributions (2 U.S.C. 441f, 441g, 432(c)(2)).**

10 (a) [Remove and reserve].

11 \* \* \* \* \*  
12 5. Section 110.5 would be amended by revising the section title and paragraphs (a), (b),  
13 (d), and (e) to read as follows:

14 **§ 110.5 Annual Aggregate Bi-annual contribution limitation for individuals (2**  
15 **U.S.C. 441a(a)(3)).**

16 (a) Scope. This section applies to all contributions made by any individual, except  
17 individuals prohibited from making contributions under 11 CFR ~~440.4~~ 110.19 and 110.20  
18 and 11 CFR Part 115.

19 (b) ~~Annual~~ Bi-annual limitations.

20 (1) No individual ~~shall make~~ may make contributions ~~in any calendar year~~  
21 ~~which aggregate more than \$25,000~~ aggregating more than:

22 (i) \$37,500 in the case of contributions to candidates and the  
23 authorized committees of candidates; and



(ii) \$57,500 in the case of any other contributions, of which not more than \$37,500 may be attributable to contributions to political committees which are not political committees of national political parties;

(iii) However, contributions made under the increased limits under 11 CFR part 400 are not subject to the limitations of paragraph (b)(1)(i) and (ii) of this section.

(2) The limitation in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(3) The contribution limits in paragraph (b)(1) must be aggregated within the same time period as described in paragraph (b)(2). For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. Contributions must likewise be aggregated from November 3, 2004 to November 7, 2006.

(4) In every odd numbered year, the Commission will publish in the Federal Register the amount of the contribution limit in effect and place such information on the Commission's web site.

\* \* \* \* \*

(d) Independent expenditures. The ~~annual~~ bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) Contributions to delegates and delegate committees. The ~~annual~~ bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

6. Section 110.9 would be revised to read as follows:

**§ 110.9 ~~Miscellaneous provisions~~ Violation of limitations.**

~~(a) Violation of limitations.~~ No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

~~(b) Fraudulent misrepresentation. No person who is a candidate for Federal office or an employee or agent of such a candidate shall—~~

~~(1) Fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or~~

~~(2) Willfully and knowingly participate in or conspire to participate in any plan or design to violate paragraph (b)(1) of this section.~~

1 ~~(c) — Price index increase.~~

2 ~~(1) — Each limitation established by § 110.7 and § 110.8 shall be~~  
3 ~~increased by the annual percent difference of the price index, as~~  
4 ~~certified to the Commission by the Secretary of Labor. Each~~  
5 ~~amount so increased shall be the amount in effect for that calendar~~  
6 ~~year.~~

7 ~~(2) — For purposes of paragraph (c)(1) of this section, the term price~~  
8 ~~index means the average over a calendar year of the Consumer~~  
9 ~~Price Index (all items — United States city average) published~~  
10 ~~monthly by the Bureau of Labor Statistics.~~

11 ~~(d) — Voting age population. The Commission shall assure that there is annually~~  
12 ~~published in the Federal Register an estimate of the voting age population based on an~~  
13 ~~estimate of the voting age population of the United States, of each State, and of each~~  
14 ~~congressional district. The term voting age population means resident population, 18-~~  
15 ~~years of age or older.~~

16 7. Sections 110.15 and 110.16 would be added and reserved.

17 8. Section 110.17 would be added to read as follows:

18 **§ 110.17 Price index increase.**

19 (a) Price index increases for party committee expenditure limitations and Presidential  
20 candidate expenditure limitations. The limitations on expenditures established by 11  
21 CFR 110.7 and 110.8 shall be increased by the percent difference between the price  
22 index, as certified to the Commission by the Secretary of Labor, for the 12 months  
23 preceding the beginning of the calendar year and the price index for the base period.

1           (1)   Each amount so increased shall be the amount in effect for that calendar  
2                   year.

3           (2)   For purposes of this paragraph (a) the term base period means calendar  
4                   year 1974.

5   (b)   Price index increases for contributions by persons, by political parties to  
6   Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.  
7   The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and  
8   110.5, shall be increased only in odd-numbered years by the percent difference between  
9   the price index, as certified to the Commission by the Secretary of Labor, for the 12  
10   months preceding the beginning of the calendar year and the price index for the base  
11   period.

12       (1)   The increased limitations shall be in effect for the 2-year period beginning  
13           on the first day following the date of the last general election in the year  
14           preceding the year in which the amounts are increased and ending on the  
15           date of the next general election. For example, increases in the limitations  
16           made in January 2005 are effective from November 3, 2004 to November  
17           7, 2006.

18       (2)   For purposes of this paragraph (b) the term base period means calendar  
19           year 2001.

20   (c)   Rounding of price index increases. If any amount after adjustment under  
21   paragraph (a) or (b) of this section is not a multiple of \$100, such amount shall be  
22   rounded to the nearest multiple of \$100.

1 (d) Definition of price index. For purposes of this section, the term price index means  
2 the average over a calendar year of the Consumer Price Index (all items—United States  
3 city average) published monthly by the Bureau of Labor Statistics.

4 (e) Publication of price index increases. In every odd numbered year, the  
5 Commission will publish in the Federal Register the amount of the contribution limits in  
6 effect and place such information on the Commission’s web site.

7 9. Section 110.18 would be added and reserved.

8 10. Section 110.19 would be added to read as follows:

9 **110.19 Contributions by minors.**

10 (a) Contributions to candidates. An individual who is 17 years old or younger shall  
11 not make a contribution to a candidate for Federal office, including a contribution to any  
12 of the following:

13 (1) A principal campaign committee designated pursuant to 11 CFR 101.1(a);

14 (2) Any other political committee authorized by a candidate under 11 CFR  
15 101.1(b) and 102.13 to receive contributions or make expenditures on  
16 behalf of such candidate; or

17 (3) Any entity directly or indirectly established, financed, maintained or  
18 controlled by one or more Federal candidates.

19 (b) Contributions to political party committees. An individual who is 17 years old or  
20 younger shall not make a contribution or donation to:

21 (1) A national, State, district or local committee of a political party, including  
22 a national congressional campaign committee; or

1        (2) Any entity directly or indirectly established, financed, maintained or  
2                    controlled by a national, State, district or local committee of a political  
3                    party.

4        (c) Contributions to other political committees. An individual who is 17 years old or  
5        younger shall not make a contribution to any other political committee if that contribution  
6        is earmarked or otherwise directed to one or more Federal candidates or political  
7        committees or organizations covered by paragraphs (a) and (b) of this section. See 11  
8        CFR 110.6.

9        (d) Volunteer Services. Nothing in this section shall prohibit an individual who is 17  
10       years old or younger from providing volunteer services to any Federal candidate or  
11       political committee.

12       (e) Definition of directly or indirectly established, financed, maintained or controlled.  
13       Directly or indirectly established, financed, maintained or controlled has the same  
14       meaning as in 11 CFR 300.2(c).

15       11. Section 110.20 would be added to read as follows:

16       **§ 110.20       Prohibition on contributions, donations, expenditures and**  
17       **disbursements by foreign nationals.**

18       (a) A foreign national shall not, directly or ~~through any other person~~ indirectly, make  
19       a contribution or a donation of money or other thing of value ~~or an expenditure~~, or  
20       expressly or impliedly promise to make a contribution or donation, ~~or an expenditure~~, in  
21       ~~connection with a convention, a caucus, or a primary, general, special or runoff election~~  
22       in connection with any local, State or Federal election public office as defined in 11 CFR  
23       100.2 and paragraph (j) of this section.

1 (b) A foreign national shall not, directly or indirectly, make a contribution or  
2 donation to a committee of a political party. For purposes of this section, a committee of  
3 a political party includes a national party committee, a national congressional campaign  
4 committee, a State, district, or local party committee, or a subordinate committee of a  
5 State party committee, whether or not it is a political committee.

6 (c) A Presidential inaugural committee shall not accept any donation from a foreign  
7 national.

8 (d) A foreign national shall not, directly or indirectly, make any expenditure,  
9 independent expenditure, or disbursement in connection with any Federal, State, or local  
10 election as defined in 11 CFR 100.2 and paragraph (j) of this section.

11 (e) A foreign national shall not, directly or indirectly, make any disbursement for an  
12 electioneering communication as defined in 11 CFR 100.29.

13 (f) A Foreign national shall not, directly or indirectly, make a contribution or  
14 donation to a committee of a political party for the purchase or construction of an office  
15 building. See 11 CFR 300.10 and 300.35.

16 (g) (1) No person shall knowingly solicit, accept, or receive from a foreign  
17 national any contribution or donation as set out above prohibited by  
18 paragraphs (a) through (c) of this section.

19 (2) No person shall knowingly receive funds as a conduit or intermediary for a  
20 contribution or donation prohibited by paragraphs (a) through (c) of this  
21 section.

1 (3) No person shall knowingly provide substantial assistance with regard to  
2 the making of a contribution or donation prohibited by paragraphs (a)  
3 through (c) of this section.

4 (4) For purposes of this paragraph (g), knowingly means that a person must:

5 (i) Have actual knowledge that the source of the funds solicited,  
6 accepted or received is a foreign national, or

7 (ii) Have been aware of facts that would lead a reasonable person to  
8 conclude that there is a substantial probability that the source of  
9 the funds solicited, accepted or received is a foreign national; or

10 (iii) Have been aware of facts that would have led a reasonable person  
11 to inquire whether the source of the funds solicited, accepted, or  
12 received is a foreign national, but the person failed to conduct a  
13 reasonable inquiry.

14 (5) For purposes of paragraphs (g)(4)(ii) and (iii) of this section, pertinent  
15 facts include, but are not limited to:

16 (i) The use by the contributor or donor of a foreign passport or  
17 passport number for identification purposes;

18 (ii) The provision by the contributor or donor of a foreign address;

19 (iii) The contribution or donation is made by means of a check or other  
20 written instrument drawn on a foreign bank or by a wire transfer  
21 from a foreign bank; or

22 (iv) The contributor or donor resides abroad.



1 (h) A foreign national shall not direct, dictate, control, or directly or indirectly  
2 participate in the decision-making process of any person, such as a corporation, labor  
3 organization, or political committee, with regard to such person's Federal or non-Federal  
4 election-related activities, such as decisions concerning the making of contributions or  
5 expenditures in connection with elections for any local, State, or Federal office or  
6 decisions concerning the administration of a political committee.

7 (i) For purposes of this section, foreign national means-

8 (1) A foreign principal, as defined in 22 U.S.C. 611(b); or

9 (2) An individual who is not a citizen of the United States and who is not  
10 lawfully admitted for permanent residence as defined in 8 U.S.C.  
11 1101(a)(20); however,

12 (3) Foreign national shall not include any individual who is a citizen of the  
13 United States, or who is a national of the United States as defined in 8  
14 U.S.C. 1101(a)(22).

15 (j) For purposes of this section, election means the process by which individuals,  
16 whether opposed or unopposed, seek nomination for election, or election, to public office.  
17 This definition includes any general, primary, special and runoff election, and a caucus or  
18 convention of a political party.

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Karl J. Sandstrom  
Vice Chairman  
Federal Election Commission

27 DATED: \_\_\_\_\_  
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